

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6009

BILL NUMBER: HB 1038

NOTE PREPARED: Feb 24, 2005

BILL AMENDED: Feb 21, 2005

SUBJECT: Child Abuse or Neglect.

FIRST AUTHOR: Rep. Neese

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: X GENERAL
DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill provides that a law enforcement agency shall report to a child in need of services intake officer if a person: (1) is arrested for violating certain operating while intoxicated statutes; and (2) is the parent, guardian, or custodian of a passenger who is under 18 years of age who was in the vehicle at the time of the arrest.

Effective Date: July 1, 2005.

Explanation of State Expenditures: (Revised) This bill would require a law enforcement agency to report to an intake officer that a child who is a passenger in a motor vehicle may be a child in need of services (CHINS) if: (1) the person is arrested for violating Indiana law pertaining to operating a motor vehicle while intoxicated, (2) the person had a passenger in the motor vehicle who was less than 18 years of age at the time of arrest, and (3) the person is the child's parent, guardian, or custodian.

Children in Need of Services: This bill may increase the total number of CHINS cases. If this occurs, state expenditures will increase. Under current practice an order of the court decides whether a child is a CHINS.

The caseloads of the county Office of Family and Children, court with juvenile jurisdiction, and county prosecutor may increase. This increase in caseload and associated costs is unknown and contingent upon judicial action. The average cost of providing services for a CHINS is approximately \$11,953 annually. Total increases in expenditures are dependent upon the number of parents, guardians, and custodians who are stopped by law enforcement for driving while intoxicated, and the number of children referred for a CHINS determination.

Out-of-home placements and services to CHINS are funded by the local county Family and Children's Fund. Certain out-of-home placements may be matched with federal IV-E funds, and CHINS are eligible for Medicaid services. Child welfare caseworkers and other staff of the local Offices of Family and Children are state employees. Additions to the number of children being supervised by the county Offices of Family and Children may result in the need for additional staff.

In CY 2003, total CHINS expenditures were \$196.2 M for 16,415 children.

Criminal Penalties: This bill is affected by and affects current statute in two ways.

The bill would allow the courts to charge a person who is arrested for violating the laws pertaining to operating a vehicle while intoxicated, had a passenger in the person's motor vehicle who was a child less than 18 years of age, and is the child's parent, guardian, or custodian with child abuse or neglect. The number of persons who would be charged with child abuse and neglect is unknown.

Double Jeopardy - Indiana statute disallows a defendant from being convicted of multiple punishments for the same offense in a single trial. If evidence is used to establish the essential elements of one challenged offense and is also used to establish all of the essential elements of another challenged offense, it is considered double jeopardy. In the case of this bill, a defendant could be charged with both an OWI (see 1 & 2 below) and child abuse or neglect. The prosecutor would initially decide which charges to file. While the prosecutor could file both charges, the individual could not be convicted of both. In the case that both charges are filed, it is at the discretion of the judge as to which charges the individual would actually be penalized for.

(1) Current statute allows the court to charge a person with a D Felony if the person is at least 21 years of age and was operating while intoxicated a motor vehicle in which at least one passenger was less than 18. This statute was enacted during the 2004 session. The extent to which it will be used is unknown.

(2) Current statute allows the court to charge a person with neglect of a dependant if they knowingly or intentionally place the dependent in a situation that endangers the dependent's life or health. Both FSSA and the Indiana Prosecuting Attorneys Council report that this charge is used, however, it is not common procedure. Data pertaining to the number of persons charged with this crime is currently unavailable.

The requirements of this bill may result in several different scenarios depending on the charges initially filed by the prosecutor and/or the charges the judge chooses to penalize the individual for. This factor may affect state expenditures. However, any actual affect is unknown.

Background Information on OWI Numbers:

OWI Numbers: A total of 24,016 individuals were convicted of an OWI charge in CY 2003. An additional 2,746 people received diversions. The number of diversions and convictions which would have fallen under the requirements of this bill are unknown.

CY 2003 Numbers for OWI's and OWI Diversions		
Criminal Offense	Number of Convictions	Number of Diversions
OWI	19,307	2,444
OWI - Unspecified	18	4
Prior OWI within past 5 years	4,569	291
OWI resulting in injury	86	5
OWI resulting in death	36	2
Total	24,016	2,746

The number of these cases which involve children being in the car at the time of the offense is unknown.

Explanation of State Revenues: The state would likely experience a change in revenue as a result of this bill. The bill could increase or decrease revenues depending on what scenarios occur and whether or not penalties (and, as a result, fines) for individuals increase or decrease.

Explanation of Local Expenditures: If an offender is sentenced to state prison rather than to a county jail, the costs to the county may be reduced. However, any cost reduction is likely to be small.

Explanation of Local Revenues: No additional revenues would be expected since the court fees for misdemeanors and felonies are the same.

State Agencies Affected: Family and Social Services Administration; Department of Correction.

Local Agencies Affected: County Offices of Family and Children; County Prosecuting Attorney; Courts with Juvenile Jurisdiction; Trial courts; Local Law Enforcement Agencies.

Information Sources: Jane Bisbee, Family and Social Services Administration; Steve Johnson, Prosecuting Attorney's Council, 232-1836; Shirley Glenn, BMV, 232-2844; Angela Hoover, FSSA, 233-0890.

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